

# Washington Law Review

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## Contents

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# WASHINGTON LAW REVIEW

Volume 45, Number 1, March, 1970.

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### IN MEMORIAM

Ernst Levy  
John W. Richards

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### Articles

#### Motions For Summary Judgment—Their Use and Effect in Washington *Philip A. Trautman* 1

Although modern summary judgment procedures were known to the law as early as 1855, not until a century later did Washington adopt its current rules relating to summary judgment. Since the Washington provisions have been modeled after the Federal Rules, Professor Trautman's analysis of their operation and effect will be relevant to both local practitioners, and others, especially as an aid in understanding the interworkings of summary judgments with other pre-trial procedures. Despite the stringent requirements for obtaining summary judgment, as disclosed by analysis of the burdens of proof on movant and opponent, the procedure must yet be considered a useful stratagem for limiting the scope and duration of trials.

#### Filling and Building on Small Lakes—Time For Judicial and Legislative Controls *Ralph W. Johnson and G. Richard Morry* 27

Population growth and urban expansion have created tremendous pressures upon America's remaining open spaces. Small lakes, however, have heretofore proved quite resilient in the face of these developmental pressures—more so than the dry land open spaces. Now even lakes are being challenged by the developers who are commencing to invade and diminish their surfaces with fills and buildings. If these lakes are to be preserved, an effective resource control scheme is urgently required. It is only by prompt action that the increasing conflicts among bed owners and surface users can be reconciled and the public interest in open space for scenic view and recreational uses can be protected. The authors thus propose a dual control approach, including a judicial rule of "reasonableness" or "riparian-ness" and legislative regulation in the form of zoning.

#### Thou Shalt Not Fill Public Waters Without Public Permission —Washington's *Lake Chelan* Decision *Charles E. Corker* 65

The Washington Supreme Court recently held that the owner of lands periodically inundated by navigable waters of Lake Chelan must abate the fill on his land which interfered with rights of adjacent homeowners and the public to enjoy the waters of the lake. Professor Corker explores some implications of the decision as it may affect the plans of those who wish to fill shore- and tidelands which they own, and those who wish to preserve the natural public resource to the maximum extent possible. The Court's decision focuses attention on an important public problem which only the legislature (unless preempted by future federal laws) can resolve, but the legislature should do so only after careful study of many facets of the problem.

## Comments

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The members of the financial community have been very concerned about their potential liability under the Federal Securities Act since the decision in the *Bar-Chris* case. This comment proposes that those who participate in making a registration statement can determine their respective share of the responsibility for errors in the statement in advance of any controversy by means of a contribution agreement. An analysis of the public policy underpinnings of the Securities Act indicates that such an agreement could be expected to be judicially enforced. Such an agreement would also determine the risk exposure with sufficient accuracy so as to make it practical for the individual participants to obtain insurance covering their personal share of the exposure, thereby better protecting the public.

### Section 367: An Enigma

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Section 367 of the Internal Revenue Code, enacted in 1932 to curb tax abuses by American taxpayers through the use of foreign corporations, requires that the Commissioner of Internal Revenue approve the organization or reorganization of foreign corporations prior to the transaction in order for the transaction to be eligible for the non-recognition provisions in the Code. The Commissioner throughout the section's history has stringently and, in some cases, arbitrarily applied the section, despite numerous statutory and case law controls that have been promulgated since the section's adoption. The Comment offers suggestions for a revised section 367 and for administrative practices that seem more in tune with national policy on expansion of foreign trade.

### Inter-Jurisdictional Certification and Full Faith and Credit in Federal Courts

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In cases of certification between federal and state courts it is essential to determine exactly the nature of the action taken by the answering court in order to determine the treatment the answer should receive in the requesting court. Although it is clear that the state court does not usually have an abstract question before it, it is not at all clear whether it is rendering a binding opinion or only an advisory opinion. This comment urges that the federal court's treatment of the answer should be governed by the principles of the full faith and credit doctrine. Even though the certification procedure is doctrinally sound, in the interests of economy and preservation of the federal rights of the parties its invocation should be an extraordinary occasion.

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